

Chapter 62 - Telecommunications Ordinance

- (6) In the event the 5% of gross revenue option is utilized, Grantee shall file annually with the City Manager no later than ninety (90) days after the end of the Grantee's fiscal year, a statement of revenues (for that year) attributable to the operations of the Grantee's Telecommunication System within the City. Said statement shall be prepared in compliance with general accepted accounting practices and auditing standards. This statement of revenues shall present a detailed breakdown of Gross Revenues and uncollectible accounts for the year. This statement of revenues shall be certified by an officer of the Grantee whose statement shall accompany the statement of revenues.

Any transactions which have the effect of circumventing payment of required Franchise fees and/or evasion of payment of Franchise fees by non-collection or non-reporting of Gross Revenues, bartering, or any other means which evade the actual collection of revenues for business pursued by Grantee are prohibited.

- (7) License and Franchise fees shall be in addition to any other tax, charge, fee, or payment due the City by a Grantee.

10. New Developments

- (1) Grantee may, from time to time, implement new services and developments allowed by law. A Grantee may not provide cable television services as defined by the U.S. Cable Communication Policy Act of 1984.
- (2) In addition to those matters required in a Franchise, Grantees make the following express acknowledgements:
- (a) That the City has the right to make reasonable amendments to this ordinance which do not materially increase any financial, economic or performance burden to the detriment of a Grantee during the term of the License or Franchise upon ninety (90) days' notice to the Grantee, or without notice with respect to an emergency amendment. It further recognizes and agrees that the City shall in no way be bound to renew or extend the License or Franchise at the end of any License or Franchise term and that it may be deemed a mere licensee at the expiration thereof.
- (b) That a Grantee shall have no recourse whatsoever against the City for any loss, cost, expense or damage arising out of the failure of City to have the authority to grant all or any part of a License or Franchise. A Grantee expressly acknowledges that on accepting a License or Franchise it did so relying on its own investigation and understanding of the power and authority of the City.

- (c) By acceptance of a License or Franchise a Grantee acknowledges that it has not been induced to enter into a License or Franchise by any understanding or promise or other statement, whether verbal or written, by or on behalf of City or by any other third person concerning any term or condition of a License or Franchise not expressed in this Ordinance.
- (d) Grantee further acknowledges by the acceptance of a License or Franchise that it has carefully read its terms and conditions, and does accept all of the risks of the meaning of such terms and conditions.
- (3) However, if any such state or federal law or regulation shall require a Grantee to perform any service, or shall allow a Grantee to perform any service, or shall prohibit a Grantee from performing any service, in conflict with the terms of the License or Franchise or of any law or regulation of the City, then as soon as possible, a Grantee shall notify the City of the point of conflict believed to exist between such regulation or law and the laws and regulations of the City or the License and Franchise. Notwithstanding such conflict, the Grantee shall comply with the terms of the License or Franchise unless released by the City.
- (4) If any provision of a License or Franchise is held by any court of competent jurisdiction to be invalid as conflicting with any federal or state law, rule or regulation now or hereafter in effect, or is held by such court to be modified in any way in order to conform to the requirements of any law, rule or regulation, said provision may be considered a separate, distinct and independent part of the License or Franchise, and such holding shall not affect the validity and enforceability of all other provisions if the City so determines. In the event that such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed, so that the provision which had been held invalid or modified is no longer in conflict with the law, rules or regulations said provision shall return to full force and effect and shall be binding on the parties.
- (5) If the parties determine that a material provision of a License or Franchise is affected by action of a court or of the state or federal Government, the parties shall have the right to modify any of the provisions to such reasonable extent as may be necessary to carry out the full intent and purpose of the License and Franchise.

11. Liability

- (1) A Grantee shall indemnify and hold harmless the City as set forth in the License or Franchise at all times during the life of a License or Franchise and will pay all damages and penalties which the City may be required to pay as a result of granting a License or Franchise to Grantee.

- (2) A Grantee shall at all times during the life of a License or Franchise carry and require its contractors and subcontractors to carry out public liability, property damage, worker's disability, and vehicle insurance in such form and amount as shall be determined by the City as set forth in the License or Franchise. All required insurance coverage shall provide for thirty (30) day notice to the City in the event of material alteration or cancellation of such coverage prior to the effective date of such material alteration or cancellation. Failure of the Grantee to provide appropriate insurance certificates to the City within sixty (60) days after the execution of a License or Franchise shall render the License or Franchise null and void.

12. General Capability

- (1) Further, if the Grantee of a Franchise, provides a new service, facility, equipment, fee or grant to any other community which it serves within the State of Michigan, the same shall be provided in or to the City. City shall waive this requirement in a Franchise upon an affirmative demonstration that such service would be undesirable, impractical, infeasible or uneconomical in the City due to population, density or other relevant factors.
- (2) The Grantee of a Franchise shall allow the City to access the Telecommunication System from any city buildings, police stations, fire stations, other public buildings, each school licensed by the State of Michigan, and each public library within 500 feet of the Telecommunication System on fees, terms and conditions set forth in the Franchise.
- (3) Only in the event of a state or national emergency or other urgent community need, a Grantee of a franchise shall, upon request of City, make available its facilities to the City for the duration of the emergency.
- (4) To the extent feasible, and subject to reasonable availability and agreement among the franchisees concerning maintenance, access and security, a Telecommunication System shall be interconnected with other Telecommunication Systems within the City for the purpose of facilitating the provision of universal service in the City. Interconnecting may be done by direct cable or fiber optical connection, microwave link, satellite, or other appropriate method. The cost of such interconnection shall be equally shared by each Grantee. A Grantee shall not impose any discriminatory or punitive interconnection fee on a non-Subscriber. A Grantee shall not refuse or delay access service or be unreasonable in connecting another Grantee to the Telecommunication System or refuse or delay access service by any person to another Telecommunication System.

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13. Conditions of Street Occupancy

A Grantee shall not commence construction upon, over, across, or under the roads, bridges, streets, rights-of-way or easements in the City without first obtaining a construction permit as required under Chapter 33 of the City Code, as amended, which shall apply to the construction of a Telecommunication System.

14. Technical and Construction Standards

- (1) Each Grantee shall construct, install and maintain its Telecommunication System in a manner consistent and in compliance with all applicable laws, ordinances, construction standards, governmental requirements, and technical standards established by the Federal Communications Commission or state agency.
- (2) In any event, the Telecommunication System shall not endanger or interfere with the safety of persons or property within the City or other areas where the Grantee may have equipment located.
- (3) All working facilities, conditions, and procedures, used or occurring during construction of the System shall comply with the standards of the Occupational Safety and Health Administration.
- (4) Construction, installation and maintenance of a Telecommunication System shall be performed in an orderly and workmanlike manner, and in close coordination with public and private utilities serving the City following accepted industry construction procedures and practices and working through existing committees and organizations.
- (5) All cable and wires shall be installed, where possible, parallel with electric and telephone lines, and multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering consideration.
- (6) A Grantee shall join the Miss Dig program.
- (7) When Grantee meets recognized engineering standards and the City, at its option, requests additional linear line footage, then the Grantee shall not be subject to the linear foot fee for such additional footage.

15. Maps, Records, and Reports

- (1) A Grantee shall annually provide the City with current maps of its existing and proposed installations in a standardized format for use with the City's G.I.S. data system unless no changes have occurred in the previously submitted map.

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- (2) The Grantee of a Franchise shall annually file with the City Clerk fifteen copies (15) of its annual financial reports, including its annual income statement, a balance sheet, and a statement of its properties devoted to Telecommunication System operations. A Grantee shall submit such reasonable information as may be requested by the City with respect to its property and revenues, expenses or operations within the City. All information provided to the City shall be maintained by the City as proprietary and confidential.
- (3) An accurate and comprehensive file shall be kept by a Franchise Grantee of all Subscriber and user complaints regarding the Telecommunication System. A procedure shall be established by the Grantee by the time of installation of the system to quickly and reasonably remedy complaints to the satisfaction of the City. Complete records of Grantee's actions in response to all complaints shall be kept. These files and records shall remain open to the public during normal business hours.
- (4) Grantee shall submit to the City such other reasonable information or reports in such form and at such times as the City may request.
- (5) In the event the 5% of gross revenue option is utilized, subject to the privacy rights of Grantee, this Ordinance, federal and state laws and regulations, a Franchise Grantee shall keep open books and records relating to the financial operations of the Telecommunication System provided to the City. The City shall have the right to inspect, during normal business hours, upon a two-day notice, all books, records, maps, plans, service complaint logs, performance test results and other like materials of the Grantee which relate to the financial operation of the Telecommunication System. Access to the aforementioned records shall not be denied by the Grantee on the basis that the records contain proprietary information, provided that City maintains such information as proprietary and confidential.
- (6) a. Subject to the privacy rights of Grantee and this Ordinance and to federal and state laws and regulations, a Franchise Grantee shall keep open all non-financial books and records relating to the operations of the Telecommunication System provided to the City. The City shall have the right to inspect, during normal business hours, upon a two-day notice, all books, records, maps, plans, service complaint logs, performance test results and other like materials of the Grantee which relate to the operation of the Telecommunication System. Access to the aforementioned records shall not be denied by the Grantee on the basis that the records contain proprietary information, provided that City maintains such information as proprietary and confidential.

- b. A Grantee shall allow the City to make inspections of any of the Grantee's Telecommunication Systems within the City's boundaries at any time upon one (1) day notice or, in case of emergency, upon demand without notice.
- (7) The refusal of the Grantee to file any of the records or reports and inspections required to be provided to the City under this section shall be deemed a material breach, and shall subject the Grantee to all penalties and remedies, legal or equitable, which are available to the City.
- (8) Any material, false, misleading statement, or representation knowingly made by the Grantee in any report shall be deemed a material breach of the License or Franchise, and shall subject the Grantee to all penalties and remedies, legal or equitable, which are available to the City.
16. Waiver A Grantee agrees not to oppose intervention by the City in any suit or proceeding to which the Grantee is a party relating to the City's Franchise or License. A Grantee agrees to abide by all provisions of this Ordinance and its License and Franchise.
17. Sale or Transfer of Rights of Franchises
-) Neither the Franchise nor any of Grantee's interest therein or in the facilities shall be sold, assigned, transferred, pledged, leased, sublet, hypothecated or mortgaged in any manner, in whole or in part, to any person or entity, nor shall title thereto, either legal or equitable, or any right or interest therein, or any property or assets relating to this Franchise or the facilities, pass to or vest in any person or entity, without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. Grantee shall not otherwise provide service to a person or entity who the City contends is required to obtain a franchise from the City and who lacks such franchise. Nothing herein shall prevent Grantee from assigning its rights and obligations to an affiliate (defined as any entity directly owned by Grantee or a parent entity of Grantee) or subsidiary of Grantee upon notice to the City. Any assignment or transfer to a subsidiary or affiliate of Grantee shall not relieve Grantee of its liability hereunder. Further, nothing herein shall prevent or prohibit Grantee or any of its parents, subsidiaries or affiliates, from granting a security interest in the Franchise or the facilities arising from a financing transaction. The grant or waiver of any one or more of said consents shall not render unnecessary any subsequent consent or consents, nor shall the grant of any said consent constitute a waiver of any other rights of the City. In the event of a foreclosure proceeding pursuant to the enforcement of a security interest granted by Grantee, or

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any parent or subsidiary of Grantee, the City shall have the right to approve the purchaser of the Franchise and/or the facilities at a foreclosure sale, which approval shall not be unreasonably withheld or unduly delayed. The prohibition against sales, assignments, transfers and similar actions shall also fully apply to any transfer of control of Grantee ("Control") and such transfer of Control shall also require the prior written approval of the City which approval shall not be unreasonably withheld or unduly delayed.

- (2) No Franchise nor any part or portion of its interest in the Franchise may be sold, transferred or assigned until the facilities, equipment and personnel which the Grantee has proposed in the current Franchise application to provide and install pursuant to the Franchise are one hundred (100%) percent completed and operational for a minimum period of three (3) years except to Grantee's parent, affiliate or subsidiary.
- (3) Any attempted transfer of the Franchise, facilities, Control or similar action by Grantee in violation of this Section shall be ineffective and void and shall constitute a material event of default by Grantee.

18. Construction and Performance Guarantee and Letter of Credit

A Grantee shall, prior to construction and within thirty (30) days of the execution of a License or Franchise, file with the City Clerk, a letter of credit or cash deposit in a reasonable amount set by the terms of the License or Franchise based upon the construction cost of the lines to be installed upon, over, across, or under the roads, bridges, streets, rights-of-way or easements in the City. The Grantee and the City Engineer may make arrangements for the periodic release of the cash deposit or letter of credit in proportionate amounts as progress is made, as provided in Chapter 33.

19. Termination In addition to all other rights and powers reserved or pertaining to the City, the City reserves as an additional and as a separate and distinct remedy the right to terminate a License or Franchise and all rights and privileges of a Grantee in any of the following events or for any of the following reasons:

- (1) A Grantee fails after thirty (30) days prior written notice to comply with any of the provisions of the License or Franchise or has, by act or omission, violated any term or condition; or
- (2) A Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt; or
- (3) All or part of a Grantee's facilities are sold under an instrument to secure a debt and are not redeemed by Grantee within ninety (90) days from such sale; or

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- (4) A Grantee attempts to or does practice any fraud or deceit in its conduct or relations with the City under the License or Franchise; or
- (5) City condemns all of the property of a Grantee within the City by the lawful exercise of eminent domain.
- (6) The Grantee abandons the Telecommunication System or fails to seek renewal of its License or Franchise.
- (7) No termination, except for reason of condemnation, shall be effective unless or until the City shall have adopted a resolution setting forth the cause and reason for the revocation and the effective date, which resolution shall not be adopted without thirty (30) days prior notice to Grantee and an opportunity for Grantee to be heard on the proposed resolution.

20. Removal

- (1) Upon expiration or termination of a License or Franchise, if the License or Franchise is not renewed, the Grantee may remove any underground cable from the streets which has been installed in such a manner that it can be removed without trenching or other opening of the streets along the extension of cable to be removed. Except as otherwise provided, the Grantee shall not remove any underground cable or conduit which requires trenching or other opening of the streets along the extension of cable to be removed. The Grantee shall remove, at its sole cost and expense, any underground cable or conduit by trenching or opening of the streets along the extension or otherwise which is ordered to be removed by the City based upon a determination, in the sole discretion of the City, that removal is required in order to eliminate or prevent a hazardous condition or promote future utilization of the streets for public purposes. Any order by the City to remove cable or conduit shall be mailed to the Grantee not later than thirty (30) calendar days following the date of expiration of the License or Franchise. A Grantee shall file written notice with the City Clerk not later than thirty (30) calendar days following the date of expiration or termination of the License or Franchise of its intention to remove cable and a schedule for removal by location. The schedule and timing of removal shall be subject to approval and regulation by the City. Removal shall be completed not later than twelve (12) months following the date of expiration of the License or Franchise. Underground cable and conduit in the streets and rights-of-way which is not removed shall be deemed abandoned and title shall be vested in the City.

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- (2) Upon expiration, termination or revocation of a License or Franchise, if the License or Franchise is not renewed, a Grantee, at its sole expense, shall, unless relieved of the obligation by the City, remove, from the streets all above ground elements of the Telecommunication System, including but not limited to pedestal mounted terminal boxes, and lines attached to or suspended from poles.
 - (3) Grantee shall apply for and obtain such encroachment permits, Licenses, authorizations or other approvals and pay such fees and deposit such security as required by applicable law or ordinance of the City, shall conduct and complete the work of removal in compliance with all such applicable law or ordinances, and shall restore the streets and rights-of-way to the same condition they were in before the work of removal commenced. The work of removal shall be completed not later than twelve (12) months.
21. Continuity of Service It shall be the right of all Subscribers to receive all available services insofar as their financial and other obligations to the Grantee of a Franchise are honored. In the event that the Grantee elects to overbuild, rebuild, modify or sell the Telecommunication System or the City terminates, revokes or fails to renew a Franchise within a reasonable time, a Grantee shall do everything in its power to ensure that all Subscribers receive continuous, uninterrupted service regardless of the circumstances. In the event of a change of Grantee, the current Grantee shall cooperate with the new Grantee in maintaining continuity of service to all Subscribers. In the event that interruption of service is required by a Grantee for modification, repairs or the like, the interruption shall be as brief as possible and at times when the impact on Subscribers is at a minimum. Records of such interruption shall be kept.
22. Acceptance of Agreement and Incorporation of Application and Ordinance by Reference Upon execution of a License or Franchise by a Grantee, the Grantee agrees to be bound by all of its terms and conditions and accepts unconditionally the Franchise and promises to comply with and abide by all of their terms, provisions and conditions. A Grantee also agrees to provide all services set forth in its application and proposal, and, by its acceptance of the License or Franchise, a Grantee specifically grants and agrees that its application and proposal is thereby incorporated by reference and made a part of the License or Franchise. In addition, a Grantee specifically agrees that this Ordinance of the City is incorporated by reference and made a part of the License or Franchise. In the event of a conflict between the application and proposal of the Grantee, the Ordinance, and the License or Franchise, the Ordinance shall prevail.

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23. Severability If any section, subsection, sentence, clause, phrase or word of the License or Franchise is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not render invalid nor terminate the License or Franchise.

24. Tampering and Fraudulent Connections or Sales

(1) No person, whether or not a Subscriber or user to the Telecommunication System, may intentionally or knowingly remove or damage or cause to be damaged any wire, cable, conduit, equipment, or apparatus of the Grantee, or to commit any act with an intent to cause such removal or damage, or tap, tamper with, or otherwise connect any wire or device to a wire, cable, conduit, equipment and apparatus, or appurtenances of the Grantee with the intent to obtain a signal or impulse from the Telecommunication System without authorization from or compensation to the Grantee, or obtain Telecommunications Service, or sell, rent, offer or advertise for sale, rental or use any instrument, apparatus, device or plans, specifications, or instructions for making or assembling the same to connect to the Grantee's Telecommunication System with intent to cheat or defraud the Grantee of any lawful charge to which it is entitled.

(2) The prohibitions, penalties and remedies set forth in this section are in addition to any prohibitions, penalties and remedies for theft of service provided by state and federal law.

25. Equal Application The provisions of this ordinance shall be imposed upon and enforced against all Telecommunication Systems in the City requiring a License or Franchise under state law from the City.

26. Compliance with Laws All Grantees and the City shall comply with all laws, rules, regulations and orders in the exercise and performance of their rights and obligations under this ordinance and under any Franchise.

27. Most-Favored Communities Clause.

(1) In the event a Franchise Grantee enters into an agreement with a public entity in Oakland County, Macomb County or Wayne County, excluding Detroit, and agrees to a formula or method for determining franchise fees which if applied in the City would yield greater revenues than the formula or method set forth in the franchise for the right to operate a Telecommunication System, the Grantee shall grant a pro rata credit to its Troy subscribers so as to cause a redistribution of the excess to Troy subscribers.

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- (2) Telecommunication services to the City shall be charged at a rate no higher than that charged to any other governmental, public or private subscriber.



ORDINANCE NO. 95-644

**"AN ORDINANCE TO AMEND ORDINANCE NO. 94-608 ENTITLED,
'AN ORDINANCE REGULATING THE GRANTING OF FRANCHISES
FOR TELECOMMUNICATIONS SYSTEMS.'"**

THE CITY OF DEARBORN ORDAINS:

I

GENERAL PROVISIONS

Section 1.1 This Ordinance shall be known and may be cited as the Dearborn Telecommunications Systems Regulatory Ordinance.

Section 1.2 Unless otherwise stated, the following definitions of terms shall apply throughout this Ordinance:

- a) City shall mean the City of Dearborn.
- b) Council shall mean the City Council of the City of Dearborn.
- c) Customer is any person who contracts with a Grantee for, or is in any manner provided with Telecommunications System Service.
- d) Franchise is a non-exclusive, limited authorization awarded by ordinance for the construction, maintenance and operation of a Telecommunications System on, under, over or across the public ways of the City and/or to transact local telecommunications business therein.
- e) Grantee is any holder of a Telecommunications System Franchise granted pursuant to this ordinance.
- f) Person shall mean any individual, corporation, partnership or any other entity.
- g) Service means the provision or offering of telecommunications service (either directly or as a carrier for others) to Persons within the City by means of the Telecommunications System. Specifically excluded are telecommunications services subject to regulation under the Cable Act of 1984, 47 U.S.C. § 521, et seq. as amended ("Cable Act"). Any of service to residential customers shall be subject to Council approval, which shall not be unreasonably withheld or delayed.
- h) Telecommunications System means the telecommunications network to be constructed and installed by Grantee and used to provide Service pursuant to and in accordance with a Franchise,

including all network facilities such as cables, conduits, access manholes, rights-of-way, equipment, devices and appurtenances to be used by Grantee to make the telecommunications network fully operational. Specifically excluded are telecommunications systems subject to regulation under the Cable Act.

Section 1.3 It shall be unlawful for any Person to own, service, use, transmit over or operate a Telecommunications System within the City unless authorized by a valid grant of franchise.

Section 1.4 The City may grant one or more Franchises for Telecommunications Systems in the City subject to this Ordinance. The City specifically reserves the right to grant, at any time, such additional Franchises for a Telecommunications System as it deems appropriate. Additional Franchises shall not be deemed to modify, revoke, terminate or damage any rights previously granted to any other Grantee.

Section 1.5 No grant of Franchise shall be valid unless authorized by ordinance adopted by the Council and until a Franchise agreement has been executed by the Mayor and filed with the City Clerk. The Mayor is authorized to execute agreements to extend a Franchise for a period of one year or less.

Section 1.6 All Persons owning or operating a Telecommunications System within the City shall designate a local representative, operate a local business office within the greater Detroit Metropolitan Area, and shall have a publicly-listed telephone.

Section 1.7 The owner(s) or operator(s) of all franchised Telecommunications Systems operating in the City shall file with the City Engineer and the Department of Communications annually during a construction year and every two years thereafter, a current map and subsidiary plats showing the exact location of the transmission and distribution facilities and equipment of the system in the public right-of-way.

Section 1.8 All facilities and equipment of any franchised Telecommunications System operating in the City shall be constructed and maintained at a state-of-the-art level in accordance with the applicable requirements and specifications of the National Electrical Code as adopted by the City of Dearborn, the applicable rules and regulations of the Federal Communication Commission, and all other pertinent ordinances and codes of the City

Section 1.9 The Franchise agreement required by Section 1.5 may contain such terms and conditions, including, without limitation, compensation to the City for use of rights-of-way and provision by the Grantee of Services and facilities to the City, as public interest may require, subject to the limitations of any applicable federal, state or local law.

Section 1.10 In recognition of the unique character of telecommunications franchises, a franchise fee shall be determined through a negotiated franchise fee procedure based upon the value of services for similar agreements and other pertinent factors.

Section 1.11 Any Franchise granted by the City hereunder is to be held in personal trust by the Grantee and may not be sold, transferred, assumed or assigned in any manner either directly or indirectly, without the prior written consent of the Council.

II

DEPARTMENT OF COMMUNICATIONS

Section 2.1 The Dearborn Department of Communications (the "Department of Communications") shall administer all Franchises on behalf of the City; shall review and make recommendations upon any proposal for any amendment of an existing Franchise, any new Franchise and for the renewal of any Franchise.

Section 2.2 Recommendations of the Department of Communications shall be addressed to the Mayor and Council and shall be filed with the City Clerk,

Section 2.3 The Department of Communications decisions, rulings or adoptions of operational standards and Franchise policies may be appealed to the Council by any party or person aggrieved thereby. The Council may uphold or reverse the ruling or decision or may remand to the Department of Communications for rehearing or reconsideration.

Section 2.4 At the request of the Department of Communications, the designated local representative of any franchised Telecommunications System shall attend and respond at any meeting called by the Department of Communications provided, however, that such representative is given reasonable notice prior to the meeting.

III
SANCTIONS AND PENALTIES

Section 3.1 The Council may suspend or revoke any Franchise of any Telecommunications System for violation of any of the material provisions of this Ordinance and/or any Telecommunications Systems Franchise Ordinance upon the recommendation of the Department of Communications, provided, however, that Grantee is given written notice of the violation and a reasonable opportunity to cure the same. The time for cure shall be for such period as may be reasonably necessary to correct the violation as determined by the Department of Communications.

Section 3.2 It shall be unlawful for the owner or operator of any Telecommunications System in the City to collect customer fees for any period of time when its Franchise has been suspended or revoked by the Council. The City may bring action on behalf of itself or Customers to recover any such fees collected.

Section 3.3 It shall be unlawful for the owner or operator of any Telecommunications System in the City to enter upon private land or buildings without due process of law including notice and hearing or without the consent of the owner or possessor.

Section 3.4 Violation of any provisions of this Ordinance and/or any Telecommunications Systems Franchise Ordinance shall be a misdemeanor punishable by a fine of not more than \$500 or by imprisonment for not more than 90 days or both such fine and imprisonment. Each day of a continuing violation may be charged and punished as a separate and distinct offense.

IV
OTHER

Section 4.1 If any section, sub-section, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

AUTHENTICATION

This is to certify that the undersigned do hereby authenticate the foregoing Ordinance adopted on August 1, 1995 and published on August 10, 1995, effective the day following publication.

MICHAEL A GUIDO, Mayor

DUANE WYDENDORF, City Clerk



RECYCLED

FD-11

ALL STATE LEGAL (80/77/674)

Telecommunication Rules

Letzmann go over his concerns and address why the city wasn't going to change the ordinance.

"The ordinance itself is not intended to provide every detail," Letzmann noted. "Details will be in the franchisee agreement that is entered with the providers."

Councilman Randy Husk said he realized that providers of telecommunications services wanted no rules and no fees for digging up city streets. "But it ain't going to fly in this city, because (the ordinance) is the right thing for this city to do. Other cities have regulations and rates that far exceed what we originally proposed...It doesn't make any sense to let people do whatever they want."

Husk said he was fed up with the nonsense from providers and their supporters. Originally, he pointed out they wanted to sign anything to get the right to dig in the right-of-ways. Their "only complaint was the money," Husk said. Now they're nitpicking at the entire ordinance. "I challenge them to tell us what's wrong."

EDS attorney Joan Trusty said she had no complaints with the revised ordinance. "EDS is just very pleased with the responsiveness to our concerns and those of our customers and our current owner, General Motors." She thanked council for the chance to make their concerns known to the city.

However, TCI's attorney Jim Alexander said Troy's ordinance "is not in keeping with the law of the land." He contends TCI can dig in the right-of-way under state law and the city can't stop them.

City Attorney Letzmann, however, believes differently. He called it a "proper ordinance" under state law.

Ameritech Michigan only wanted to know if it was affected in any way.

Husk smiled when he said, "We all recognize at this time we can't apply these rights to regulate phone service of Ameritech." He did speculate that if municipalities joined together, he suspected they could overturn Ameritech's protected status that dates back to 1904. He said one city couldn't fight them alone.

MCI Metro's attorney Jim Harlan was not having any part of this new

ordinance. After asking council not to pass it, he said, "We are here for a permit not for a franchise." He said MCI's exempt from the franchise requirement. "I'm counting down the 90 days (under state law the city has 90 days to issue a permit), and then 'we'll take the necessary remedies...You'll be arguing in state and appellate court," he said, adding that Troy was forcing MCI to go to other cities. "We will not negotiate with you at all," Harlan continued.

"When Mr. Husk says you don't have enough money to challenge big companies in court, you're right," he added very sarcastically.

This prompted Councilman Husk to say he may have to run for council again just to ensure the city that MCI never lays a foot of cable in this city without paying all the fees. He noted that "I'm not sure this will ever go to court, but if it does, believe me, we won't go there alone. We'll be joined by cities we never heard of," he told Harlan.

(After council, when Husk was asked if he really might reconsider stepping down, he smiled and said, "I'm thinking about it." He has until January 22 to decide.)

Councilman Matt Pryor opposed passing the ordinance on the grounds that "it is illegal if passed." He said it would be "a waste of money, expended resources, and lost opportunities." He suggested the city should be talking to their legislators about protecting cities and residents.

Councilman Robert Gosselin opposed it calling it "another lay of government" and more taxes people didn't get to vote on.

However, it passed 4-2, with Mayor Jeanne Stine absent.

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by
CYNTHIA KMETT

COUNCIL, from page 1

ernment." Fees levied under this law "shall be on a nondiscriminatory basis and shall not exceed the fixed and variable costs to the local unit of government in granting a permit and maintaining the right-of-ways, easements, or public places used by a provider." While the city cannot recoup the cost of acquiring right of way, it can charge firms for what it costs for upkeep and repair.

Under the new ordinance, Troy will charge 40 cents a linear foot underground and 25 cents a foot for overhead lines, plus there is a \$3,000 fee for the provider (not users) who dig in the right-of-way.

"Will this cover Troy's costs?" council asked City Manager Frank Gerstenecker.

"No," he replied rather matter-of-factly. In fact, he said his original request, minus the initial cost of the right-of-way, was probably much closer to the costs for the city. The city should reserve the right to change costs based on a review of actual costs, Gerstenecker said.

He reminded the council that the city will be the entity held responsible if one of the providers does damage in the right-of-way to either our own utilities or the roadway, and possibly to the owners of other utilities. He pointed to the recent fiasco in Auburn Hills where a contractor dug through the water main and turned off water in two cities as an example of why the city must be very vigilant about companies digging in the city's right-of-ways.

The Chamber of Commerce Chairman of the Board Phil Goy had sent a letter with many points of contention about the proposed law, but Mayor Pro Tem Tony Pallotta had

Finances Look Good for '96

ECONOMIC CLUB, from page 1

Miller said 1995 looks to be the year where the Federal Reserve broke the back of inflation. Commodity prices and interest rates that accelerated in 1994 began to go down in 1995. Bank loans grew to a fever pitch in 1994 but started to slow in 1995

by another one-half percent.

"By acting pre-emptively to halt the rise of inflation and interest rates, Federal Reserve may have added life to this recovery," he asserted.

Miller reminded his audience that inflation rates nearly tripled before the last recession, moving from below two

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City of Troy

December 16, 1996

Mr. Michael Holmes
Ameritech Michigan
Room 1750
444 Michigan Avenue
Detroit, MI 48226

RE: Compliance with the City of Troy Telecommunications Ordinance

Dear Sir:

In compliance with state and federal legislation, on December 18, 1995, the Troy City Council adopted a telecommunications ordinance, Troy City Code, Chapter 62. This Ordinance requires all telecommunications providers to obtain a "franchise" before using the public rights of way in the City of Troy.

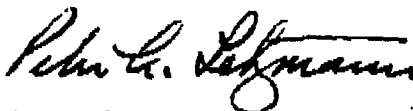
It has been a year since the adoption of the Ordinance. As of this date, Ameritech has not applied for, or obtained a telecommunications franchise as required by the Ordinance. For your convenience, I am sending a copy of the ordinance and a franchise application under a separate cover. We request that Ameritech complete and submit the application for such a telecommunications franchise.

Ameritech is an excellent corporate citizen of Troy. The Ameritech employees make a significant contribution to the Troy community. The community welcomes Ameritech New Media as a competitive cable provider. We thank Ameritech for being in Troy and look forward to a mutually beneficial and continuing relationship with Ameritech.

I am available for your comments and questions at 810-524-3320.

Truly yours,

CITY OF TROY
LAW DEPARTMENT



Peter A. Letzmann
City Attorney

PAL/jb

Post-It® Fax Note	7671	Date	1.14.97	# of pages	1
To	M ASHTON	From	LETZMANN		
Co./Dept.		Co.	TROY		
Phone #	517 482-5800	Phone #	810 524-3320		
Fax #	517 482-0667	Fax #	810 524-3259		

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Bldg. Inspections	524-3344	Dept. of Public Works	524-3370	Library	524-3545	Purchasing	524-3338
City Assessor	524-3311	Engineering	524-3383	Museum	524-3570	Recreation (Parks)	524-3484
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City Clerk	524-3316	Fire	524-3419	Planning	524-3384	Treasurer	524-3334
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Writer's Direct Dial
(517) 377-0875

January 29, 1997

OF COUNSEL
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EVERETT R. TREBILCOCK
JAMES R. DAVIS
DONALD A. HINES

*ALSO LICENSED IN FLORIDA
*ALSO LICENSED IN DISTRICT OF COLUMBIA
*ALSO LICENSED IN OHIO
**ALSO CERTIFIED PUBLIC ACCOUNTANT
***ALSO LICENSED IN COLORADO

BY FACSIMILE AND REGULAR MAIL

Mr. John Szerlag
City Manager
City of Troy
500 W. Big Beaver Rd.
Troy, MI 48084-5254

Re: **FOIA Request For All Responses From Ameritech Regarding Troy's Request
That It To Apply For A Franchise Under Troy's Telecommunications
Ordinance**

Dear Mr. Szerlag:

Pursuant to the Michigan Freedom of Information Act, MCL §15.231, et seq., we hereby request copies of all responses from Ameritech Michigan to the City of Troy's request that Ameritech Michigan apply for either a license, permit and/or franchise issued under the City of Troy's Telecommunications Ordinance.

This request covers documents in your possession as well as any other documents which may be in the possession of or available to any other departmental personnel. As used in this letter, the term "documents" includes all originals and any non-identical copies of records of any kind, whether formal or informal, including letters, notes, diagrams, maps, photographs, charts, video tapes, audio tapes, graphs, files, calendars, summaries, computer printouts, cards, floppy disks and any other information-bearing media which can be processed, translated or transcribed into reasonably useable form.

In accordance with § 5(1) of the Freedom of Information Act, copies of the above-described records should be provided to the undersigned immediately, but not more than five business days after the date of this letter. If you have any questions regarding the scope of this request, please contact me immediately. We will be happy to send a carrier to obtain copies of these documents. Thank you for your cooperation.

Very truly yours,

FRASER TREBILCOCK DAVIS & FOSTER, P.C.


Michael S. Ashton

City of Troy

January 30, 1997

Michael S Ashton
Fraser Trebilcock Davis &
Foster PC
1000 Michigan National Tower
Lansing MI 48933

Re: Freedom of Information Act Response

Dear Mr. Ashton:


Your request for records under the Freedom of Information Act directed to John Szerlag has been referred to me. The City of Troy is unable to comply with your request as the records requested do not exist.

You, of course, have the right to seek court review of this decision, as stated below:

MCLA 15.240: (1) If a public body makes a final determination to deny a request or a portion thereof, the requesting person may commence an action in the circuit court to compel disclosure, the court shall order the public body to cease withholding or to produce a public record or a portion thereof wrongfully withhold, regardless of the location of the public record...The court shall determine the matter de novo and the burden is on the public body to sustain its denial...Failure to comply with an order of the court may be punished as contempt of court...(4) If a person asserting the right to inspect or to receive a copy of a public record or a portion thereof prevails in an action commenced pursuant to this section, the court shall award reasonable attorneys' fees, costs and disbursements. If the person prevails in part, the court may in its discretion award reasonable attorneys' fees, costs, and disbursements or an appropriate portion thereof...(5) In an action commenced pursuant to this section, if the circuit court finds that the public body has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall, in addition to any actual or compensatory damages, award punitive damages in the amount of \$500.00 to the person seeking the right to inspect or receive a copy of a public record...

Very truly yours,

DEPARTMENT OF LAW


Peter A. Letzmann
City Attorney

ps

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City Clerk	524-3316	Fire	524-3419	Planning	524-3364	Treasurer	524-3334
City Manager	524-3330	Information	524-3300	Police Dept	524-3443		



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